



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-5620

Re: Whether or not under the facts submitted the claim of Mount Olivet Cemetery Company can be paid from the appropriation for the support and maintenance of the Highway Department for the fiscal year beginning September 1, 1943.

Your letter of September 16, 1943, requesting the opinion of this Department on the above stated question reads as follows:

"I am attaching hereto Claim filed in this Department in favor of Mount Olivet Cemetery Company, which appears to be supported by judgment of the District Court of Tarrant County, Texas.

"According to information reaching this Department, the damage incurred in this Claim was in 1936. I will therefore request your opinion as to whether this Claim may be paid from the appropriation for the support and maintenance of the Highway Department for the fiscal year beginning September 1, 1943."

Honorable George H. Sheppard, Page #2.

On August 9, 1943, at a regular term of the 98th District Court of Tarrant County, Texas, in Cause No. 25570-A, Mount Olivet Cemetery Company vs. State of Texas, et al, a compromise judgment was entered between the parties decreeing that Plaintiff, Mount Olivet Cemetery Company, have judgment against the Defendants, The State of Texas and the Texas Highway Commission, in the amount of Thirty Five Hundred (\$3500.00) Dollars; and further, that Plaintiff have judgment against the Defendants for costs.

In Opinion No. O-3245, this Department held that the Legislature has the power to appropriate from the State Highway Fund moneys to pay the judgment rendered against the State of Texas on the case of W. S. Hale, et ux. vs. The State of Texas, et al. The question presented in this Opinion is whether or not the Legislature has appropriated from the State Highway Funds moneys to pay the above mentioned judgment or in other words is there an appropriation available from which said judgment can be paid.

In connection with your request we have carefully considered Senate Bill No. 332, Acts of the 44th Legislature Regular Session, 1943, (Chapter 400, pp. 942-948) and fail to find any available appropriation from which said judgment can be paid.

It is our Opinion that the judgment cannot be paid from the appropriation for the support and maintenance of the Highway Department under the present Appropriation Act.

APPROVED SEP 28, 1943

Yours very truly

ATTORNEY GENERAL OF TEXAS

Norm Sullivan
FIRST ASSISTANT
ATTORNEY GENERAL

By

Ardell Williams
Ardell Williams
Assistant

AW:pm

